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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,722	04/16/2004	Tonya Lammers	TONL122469	9946

26389 7590 04/15/2008

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 04/15/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on November 29, 2007. The submission, however, is not fully responsive to the prior Office action because Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. See MPEP 706.07(h)VI(B).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. The amendment, filed on November 29, 2007, cancels all claims drawn to the elected invention and presents only claims drawn to a non-elected invention. Newly submitted claims 30-47 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-29 are drawn to an appendage cover for gliding upon a surface, classified in class 36, subclass 115.
- II. Claims 30-47 are drawn to a method for gliding upon a surface utilizing an appendage cover, classified in class 5, subclass 81.1HS.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that

product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using that product, such as an athletic shoe for a sport (e.g. skating, skiing, etc.) featuring relative movement between shoe and ground.

2. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR K. HWANG whose telephone number is (571) 272-4976. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor K. Hwang  
Examiner  
Art Unit 3764

/V. K. H./  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764